REMARKS

Claims 1, 3-10, and 12-22 are pending in the application. Claims 23-40 were previously withdrawn from consideration. Claims 1, 3-10, and 12-21 stand allowed. Claim 22 stands rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. In view of the arguments herein, the rejection is respectfully traversed. Reconsideration and allowance are respectfully requested.

Please cancel claims 23-40, without prejudice or disclaimer.

The Rejection of Claim 22 under 35 U.S.C. 101

The Office Action alleges that claim 22 recites "a machine-readable medium." However, in the response of May 22, 2009, the term "storage" was added to claim 22, so that it currently recites "a machine-readable storage medium" (emphasis added) rather than "a machine-readable medium."

Although paragraph [0021] of the specification defines the broader term "machine readable medium" to embrace wireless channels, "machine readable storage medium" does not embrace wireless channels or other propagated signals. Paragraph [0021] defines the term "machine readable medium" to include mediums capable of "storing, containing or carrying instruction(s) and/or data." A wireless channel clearly falls in the category of "carrying" instruction(s) rather than "storing" instructions. Paragraph [0021] includes a definition of a "storage medium" as a medium that "may represent one or more devices for storing data, including read only memory (ROM), random access memory (RAM), magnetic disk storage mediums, optical storage mediums, flash memory devices and/or other machine readable mediums for storing information." These types of media "store" information and are embraced in claim 22, whereas a wireless channel carries information and is outside the scope of claim 22.

The cited In Re Nuitjen case itself recognizes the difference between storage media and propagated signals. In that case, the Federal Circuit noted that "Finally, Nuijten's allowed Claim 15 is directed to "[a] storage medium having stored thereon a signal with embedded supplemental data," where the stored signal has essentially the encoding properties described above. Thus, Nuijten has been allowed claims to the process he invented, a device that performs that process, and a storage medium holding the resulting signals. None of these claims is before us on appeal." In re Nuitjen, 500 F.3d 1346, 1351 (Fed. Cir. 2007).

That is, the storage medium claims were allowed by the patent office and only the signal claims were the subject of the appeal.

In view of the above, Applicant respectfully asserts that claim 22 is directed to statutory subject matter, and requests the rejection be withdrawn.

CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue, or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026. If a fee is required for an extension of time under 37 CFR 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated Feb 3, 2010 By: _____

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